

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**MARCELLA NEWGENT, ANITA KISH,
as natural parent and guardian of TONY
NEWGENT, minor, JE'EL NEWGENT,
and TERRI BLANKINSHIP,
Plaintiff,**

vs.

**CAPITAL INSTINCT, INC., d/b/a
TRANSLOG MANAGEMENT, INC.,
SENTRY SELECT INSURANCE
COMPANY and WAYNE STARK,
Defendants.**

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Civil Action No.

NOTICE OF REMOVAL

TO: The Judges of the United States District Court, Northern District of Georgia

COME NOW the Defendants and respectfully show the Court as follows:

1.

A civil action was brought against the Defendants in the State Court of Clayton County, State of Georgia, by the above-named Plaintiffs, said action being designated as Civil Action File No. 2023CV00302. It has now been demonstrated through Plaintiffs' recently received discovery responses that the Plaintiffs are each seeking to recover from the Defendants a sum in excess of \$75,000, exclusive of interest and costs.

2.

Plaintiff's discovery responses were served by Plaintiffs on April 17, 2023 (see, Exhibit 19 hereto).

3.

Plaintiffs' response to Defendant SCP Distributors, LLC's request for admissions disclosed that each of the Plaintiffs were seeking damages in excess of \$75,000 (see, Exhibit 18 hereto).

4.

The allegation paragraphs of Plaintiffs' Complaint in this matter had not stated an amount that the Plaintiffs were seeking (see, Exhibit 1 hereto).

5.

The ad damnum clause of Plaintiff's Complaint also did not specify any specific amount of money being sought as damages (see, Exhibit 1 hereto).

6.

The Plaintiffs are all citizens and residents of the State of Illinois (see, Complaint, par. 1 and Plaintiffs Interrogatory Responses at nos. 1, Exhibits 1,13, 14, 15 & 16 hereto).

7.

Defendant Capital Instinct, Inc is a Georgia corporation (see, Complaint, Par. 3, and Answer to said paragraph, Exhibits 1 and 5 hereto).

8.

Defendant Stark is a Georgia resident (see, Complaint, Par. 5, and Answer to said paragraph, Exhibits 1 and 5 hereto).

9.

Defendant Sentry Select insurance Company is a Wisconsin insurance company (see, Complaint, Par. 4, and Answer to said paragraph, Exhibits 1 and 5 hereto).

10.

There is complete diversity of citizenship among the parties in this matter.

11.

It is now shown by the Plaintiffs' discovery responses that they are each seeking an amount of damages in their lawsuit that exceeds the \$75,000 jurisdictional limit for federal jurisdiction based on diversity of citizenship.

12.

Under 28 USC § 1446(b)(3), if the case stated in the initial pleading is not removable, a notice of removal may be filed within 30 days after receipt by the Defendant of an amended pleading, order or "other paper" from which it may first ascertain that the case is one which is or has become removable.

13.

Under 28 USC § 1446(c)(3)(A), if the case stated in the initial pleading is not removable because the amount in controversy does not exceed the amount specified in 28 USC § 1332(a), information related to the amount in controversy shown in responses to discovery shall be treated as an “other paper” under 28 USC § 1446(b)(3).

14.

This Notice of Removal is filed within 30 days of receipt of such “other paper” from the Plaintiffs.

15.

Defendants attach hereto or separately file herewith the pleadings from the state court action, which have been labeled as Exhibits 1 through 24.

16.

This action could have originally been brought in this Court by the Plaintiffs under 28 USC §1332, in that it is a civil action wherein the amount in controversy exceeds \$75,000, exclusive of interest and costs, and there is diversity of citizenship between the parties.

17.

Pursuant to 28 USC § 1441, et seq., this action is now removable by reason of diversity of citizenship, there being diversity of citizenship and more than \$75,000 in controversy, exclusive of interest and costs.

18.

Notice of Removal is hereby given in accordance with 28 USC § 1446.

WHEREFORE, Defendants file this Notice of Removal of this lawsuit to this court.

Respectfully submitted, this 28th day of April, 2023.

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FAIN MAJOR & BRENNAN, P.C.

/s/ Dale C. Ray, Jr.

JAMES W. HARDEE
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Georgia Bar No. 596095
Counsel for Defendants

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CERTIFICATE OF SERVICE

This is to certify that I have this date served upon counsel for the opposing parties in the foregoing matter a copy of the foregoing NOTICE OF REMOVAL with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the following counsel of record:

Edward J. Hardrick
MORGN & MORGAN ATLANTA, PLLC
178 S. Main St., Unit 300
Alpharetta, GA 30009
ehardrick@forthepeople.com

This 28th day of April, 2023.

SIGNATURE ON NEXT PAGE

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FAIN MAJOR & BRENNAN, P.C.

/s/Dale C. Ray, Jr.
DALE C. RAY, JR.
Georgia Bar No. 596095
Counsel for Defendants